



Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

Suite 15300  
1800 Century Boulevard  
Atlanta, Georgia 30345  
(404) 417-2100

## NOTICE

**RE: Repeal of current Rule 560-12-2-.30, entitled “Drugs, Medicine and Medical Equipment. Amended.”, and adopting in its place new Rule 560-12-2-.30, entitled “Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items.”**

**TO ALL INTERESTED PERSONS AND PARTIES:**

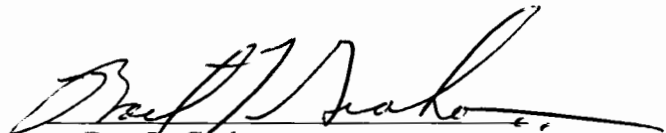
In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by repealing Rule 560-12-2-.30, entitled “Drugs, Medicine and Medical Equipment. Amended.”, and adopting in its place new Rule 560-12-2-.30, entitled “Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items.” The Rule is being proposed to reflect the comments and responses received from interested parties on the prior proposed Rule regarding drugs, durable medical equipment, prosthetic devices, and other medical items, which was issued on November 8, 2006, as Notice Number SUT-2006-4.

Attached with this notice is the exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted and repealed under the authority of O.C.G.A. §§ 48-2-12 and 48-8-3(54).

The Department of Revenue shall consider the adoption and repeal of the above referenced proposed Rule at 10:00 a.m. on August 7, 2007, in Suite 15200 of the Department’s headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above referenced proposed Rule from interested persons no later than 10:00 a.m. on August 7, 2007. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (404) 417-6651. **Please reference “Notice Number SUT-2007-1” on all comments.**

Dated: July 6, 2007

  
Bart L. Graham  
Commissioner, Department of Revenue

# **SYNOPSIS**

## **GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION**

### **CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS**

#### **560-12-2-.30 Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items.**

The purpose of repealing current Rule 560-12-2-.30 and replacing it with proposed new Rule 560-12-2-.30 is to provide guidance related to the administration of Georgia sales and use tax to Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items. The title is also being changed from “Drugs, Medicine and Medical Equipment. Amended.” to “Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items.”

Paragraph (1) of the proposed new Rule provides the purpose of the Rule.

Paragraph (2) of the proposed new Rule provides for definitions and explanations of terms used in the Rule.

Paragraph (3) of the proposed new Rule provides for the application of Georgia sales and use tax to sales of drugs.

Paragraph (4) of the proposed new Rule provides for the application of Georgia sales and use tax to sales of durable medical equipment and provides examples of such equipment.

Paragraph (5) of the proposed new Rule provides for the application of Georgia sales and use tax to sales prosthetic devices and provides examples of such devices.

Paragraph (6) of the proposed new Rule provides for the application of Georgia sales and use tax to sales of certain other medical items.

**RULES  
OF  
DEPARTMENT OF REVENUE  
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2  
SUBSTANTIVE RULES AND REGULATIONS**

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**~~560-12-2-.30 Drugs, Medicine and Medical Equipment.~~  
~~Amended.~~  
Drugs, Durable Medical Equipment, Prosthetic Devices, and  
Other Medical Items.**

~~—(1) The tax applies to all retail sales of drugs, medicine, medical supplies and equipment except sales of drugs and oxygen dispensed by prescription or insulin syringes and hearing aids without prescription as provided for herein.~~

~~—(2) Retailers contracting with certain organizations to fill prescriptions for a flat charge shall collect and remit the tax on the total charge or charges therefore, irrespective of the fact that payments may be made jointly by the consumer and another person.~~

~~—(3) A retailer holding out to the public that he will absorb all or any part of the tax violates O.C.G.A. 48-8-36 and is subject to the penalties described therein.~~

~~—(4) Sales to the Federal Government, the State of Georgia, any county or municipality or bona fide department of such government when paid for directly to the seller by warrant on appropriated government funds, including Hospital Authorities created by Chapter 88-18 of the Code of Georgia are exempt.~~

~~—(a) Certain nonprofit nursing homes or nonprofit general or mental hospitals may purchase drugs, medicines and medical equipment exempt for use in providing nursing home or hospital treatment by furnishing a supplier with a Certificate of Exemption, Form ST NH 2. (See also Rule 560-12-2.92).~~

~~—(b) Sales of drugs, medicine and medical equipment to recipients or beneficiaries under Medicare, Medicaid or other programs, including insurance companies and nonprofit organizations created to take advantage of Acts which make funds available to health and welfare agencies, are taxable.~~

~~—(c) Dealers participating in the Medicaid/Medicare program who provide durable medical, orthotic and prosthetic equipment to recipients under the program and are paid directly by the government agency, should report the cost price of such equipment on Line 2 of the report form and remit the tax in the month of delivery. Dealers who provide such equipment on a rental basis may elect to include in his gross sales charges made for rental and to pay tax thereon rather than on the cost of the equipment. The measure of the tax on the dealer's use is not related to the taxability of the transaction itself.~~

~~—(5) The tax does not apply to retail sales of drugs dispensed by prescription, when the composition of the drug, the dispensing of the drug, and the prescription of the drug are in full compliance with the laws and regulations of this State pertaining thereto. As used herein, the word "drugs" means substances such as pills, tablets, powders, capsules and liquids, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings. As used herein, the phrase "dispensed by prescription" means drugs which are actually purchased at retail pursuant to a valid prescription which has been issued to the consumer by a person authorized by law to issue the prescription. This exemption does not include drugs obtained by physicians, hospitals or other medical personnel which are furnished to~~

~~patients as a part of their treatment, unless separate charges are made to the patient for the drugs and they are drugs which normally require a prescription to obtain and the person furnishing them is a person authorized by law to issue a prescription for such drugs.~~

(1) **Purpose.** This Rule sets forth the application of sales and use tax to certain drugs, durable medical equipment, prosthetic devices, and other medical items.

(2) **Definitions.** For the purposes of this Rule, the following definitions and explanations of terms shall apply:

(a) "Drugs" means substances such as pills, tablets, powders, transdermal patches, capsules, liquids, and serums that are intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease or injury in humans. Examples include, but are not limited to, antibiotics, analgesics, stimulants, sedatives, antitoxins, anesthetics, antihistamines, oxygen, vaccines, and other medications used in the diagnosis, cure, mitigation, treatment, or prevention of disease or injury in humans.

(b) "Durable Medical Equipment" means equipment which:

1. Is intended to withstand repeated use;
2. Is primarily and customarily used to serve a medical purpose;
3. Is generally not useful to a person in the absence of illness or injury; and
4. Is appropriate for use in the home.

(c) "Legend drug" means a drug that pursuant to 21 U.S.C. § 353(b)(4)(A) is required to bear the symbol "Rx only" prior to being dispensed.

(d) "Over-the-counter drug" means a drug which may be purchased without a physician's prescription that is subject to federal labeling requirements under 21 CFR 201.66.

(e) "Prescription drug" means a legend drug that pursuant to federal or state law can only be dispensed upon a lawful prescription issued by a person authorized to prescribe a prescription drug.

(f) "Prosthetic device" means a replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice to:

1. Artificially replace a missing portion of the body;

2. Prevent or correct physical deformity or malfunction; or

3. Support a weak or deformed portion of the body.

**(3) Drugs.**

(a) The sale of prescription drugs or insulin for human beings, except as provided for in subparagraph (3)(b) of this Rule, is not subject to Georgia sales and use tax.

(b) When a prescription drug or insulin is dispensed for human beings by a physician, hospital, or any other person licensed to dispense prescription drugs in the operation of their profession, and the charge for the prescription drug is not itemized on the invoice, bill, or statement to the patient, the prescription drug is deemed to be used by the physician, hospital, or other person licensed to dispense prescription drugs and not eligible for the prescription

drug exemption provided for under O.C.G.A. § 48-8-3(47). In the event the charge for a prescription drug or insulin is itemized on the invoice, statement, or bill to the patient, the transaction is deemed eligible for the prescription drug exemption.

(c) Unless otherwise exempt, all sales of over-the-counter drugs are subject to Georgia sales and use tax regardless of whether they are dispensed under a prescription, even if the over-the-counter drug is purchased on the advice or recommendation of a physician. Examples of over-the-counter drugs include dietary supplements, vitamins, minerals, herbs, aspirin, acetaminophen, ibuprofen, cold remedies, antacids, laxatives, and cold sore gels.

(d) Dealers must maintain sufficient prescription documentation to support exempt sales.

**(4) Durable Medical Equipment.**

(a) The sale or use of durable medical equipment (as defined under Titles XVIII and XIX of the federal Social Security Act) is exempt from Georgia sales and use tax when paid for directly by funds of the State of Georgia or the United States under Medicare or Medicaid programs. Examples of durable medical equipment include, but are not limited to:

1. Wheelchairs and attachments to wheelchairs;

2. Hospital beds, mattresses, and related attachments;

3. Drug infusion equipment (non-implanted), nebulizers, vaporizers, oxygen concentrators, infant apnea monitors, and ventilators;

4. Crutches, canes, walkers, hydraulic lifts, and related attachments;

5. Sitz bath chairs, bed pans, urinals, raised toilet seats, tub stools or benches, and bath rails;

6. Heat lamps, heat pads, and hot water bottles; and

7. Blood glucose monitors, electronic nerve stimulators (non-implanted), breast pumps, and insulin infusion pumps (non-implanted).

**(5) Prosthetic Devices.**

(a) The sale or use of physician-prescribed prosthetic devices is exempt from sales and use tax. Examples of prosthetic devices include, but are not limited to:

1. Artificial implants such as artificial arteries (e.g., vascular grafts, stents), hearts and valves (e.g., atrial, mitrial, annuloplasty rings), ears, nose, eyes (e.g., intraocular lenses), skin and other tissues (e.g., collagen, hyaluronic acid), larynx, or any other implant that replaces, in whole or part, a part of the human body;

2. Bone nails, pins, screws, plates, fixation devices, bone cement, wax, fillers, or other items surgically implanted into the body used to correct deformities, or to preserve and restore the function of the human skeletal system;

3. Organ implants;

4. Breast prostheses, including surgical brassieres for post-mastectomy patients;

5. Cardiac pacemakers and implanted cardioverter defibrillators;

6. Implanted nerve stimulators;

7. Implanted tissue expanders;

8. Implanted devices used for hydrocephalus;
9. Surgical mesh;
10. Gastric bands and intragastric balloons;
11. Colostomy, ileostomy and urostomy appliances, including bags and necessary equipment required for attachment, such as tubing;
12. Electronic speech aids if the patient had a laryngectomy or if the larynx is inoperative;
13. Dialysis equipment, artificial kidney equipment, supplies used to facilitate the dialysis process such as fistula needles, solutions, connective tubing; and repair parts for dialysis and artificial kidney machines;
14. Urinary collection systems, including Foley catheters, when replacing bladder function in cases of urinary incontinence;
15. Enteral or parental feeding systems and their individual components (e.g., catheters, filters, extension tubing, infusion pumps, nutrient solutions);
16. Artificial legs, arms and eyes, including terminal devices such as artificial hands;
17. Braces, cervical collars, abdominal belts, anti-embolism stockings, pressure/compression garments, trusses, supports, suspensories, and similar devices worn on the body to correct or alleviate a physical incapacity or injury;
18. Hoods and space shoes which replace part of a foot; and

19. Stump stockings and harnesses essential to the effective use of an artificial limb.

**(6) Other Medical Items.**

(a) The sale of physician-prescribed oxygen, eyeglasses, or contact lenses are exempt from sales and use tax.

(b) The sale of blood measuring devices, other monitoring equipment, or insulin delivery systems when used exclusively by diabetics is exempt from sales and use tax.

(c) The sale of insulin syringes and blood measuring strips is exempt from sales and use tax.

(d) The sale of wheelchairs and any accompanying equipment attached or adapted to wheelchairs is exempt from sales and use tax when sold to or used by a permanently disabled person.

(e) The sale or use of all other medical items that are not prescription drugs for human beings, durable medical equipment, or prosthetic devices is subject to Georgia sales and use tax unless otherwise exempt under O.C.G.A. § 48-8-3.

Authority O.C.G.A. §§ 48-2-12 and 48-8-3(54).